



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

NOVEMBER 18, 2020 MEETING MINUTES

This meeting was conducted via remote participation on GoToWebinar.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Danielle Evans	Clerk	<i>Present</i>	
Josh Safdie	Member	<i>Present</i>	
Anne Brockelman	Member	<i>Present</i>	
Elaine Severino	Member	<i>Present</i>	

City staff present: Charlotte Leis (Planning & Zoning), Sarah White (Planning & Zoning), Sarah Lewis (Director of Planning & Zoning)

The meeting was called to order at 6:04pm and adjourned at 11:00pm

PUBLIC HEARING: 15 McGrath Highway

(continued from November 4, 2020)

The Applicant submitted a written request prior to the agenda being posted requesting a continuance to December 16, 2020.

Following a motion by Clerk Evans, seconded by Ms. Severino, the Board voted unanimously (5-0) to continue the hearing to December 16, 2020.

RESULT:

CONTINUED TO 12/16/2020

OTHER BUSINESS: Determination of significance for changes to 485 Mystic Valley Parkway Comprehensive Permit

Ms. Leis said that the Applicant had submitted a written request prior to the meeting to continue the item to December 16, 2020. Ms. Leis noted that this is not a public hearing, but that it required a vote from the Board to continue discussion to a future meeting.

Following a motion by Clerk Evans, seconded by Ms. Severino, the Board voted unanimously (5-0) to continue the hearing to December 16, 2020.

RESULT:

CONTINUED TO 12/16/2020

PUBLIC HEARING: 120-132 Middlesex Ave

(continued from November 4, 2020)

Ms. Lewis gave an update on the questions the Board had asked at the previous meeting. Language was submitted to the City Council for the November 24th meeting to permit any application to request a Special Permit for a payment in lieu of 100% of the civic space requirement for any lot within 500' of specific major roadways. The payment in lieu money would create a civic space fund to be able to create civic space in better locations.

The cost numbers that were given are draft numbers currently; they gave a range of values as different areas of the city have different costs. The Planning Department, Economic Development Department, and the Appraiser's Office are working together to determine the costs of each neighborhood. Ms. Lewis has some examples from Assembly Square area, but is still working through what the report would mean on this site.

Ms. Lewis talked to the Legal Department about potential condition language. She was cautioned that any language regarding fee in lieu on hardship variance is inappropriate. She has some suggested language that may address some of the points the Board made last time.

Chair Fontano stated that it is understood from last meeting that a park anywhere on this site would be impacted by pollution from surrounding traffic. Ms. Lewis has the same understanding.

Joe Hanley (applicant) provided some suggested condition language that conforms to Chapter 40A, Section 10.

Chair Fontano asked if anyone from the public wished to speak. No one indicated that they wished to speak.

Mr. Hanley's understanding from the last meeting was that the Board's discussion on variance was mostly concluded and the pending questions were regarding possible conditions on variances. A proposed condition that any Master Plan Special Permit submitted within the next 2 years would require a payment in lieu for civic space in accordance with Article 12.3.3 of the SZO. He understands that it is a concern of the Legal Department that the condition cannot relate to the petitioner, but their proposed language would relate to the property itself.

Ms. Lewis stated that the Legal Department is not comfortable with approaching language that way. They can require that the applicant apply for a Master Plan Special Permit; they can require that the only lab building with supplemental uses be permitted. The difficulty is including a formula/payment amount on this approval.

Mr. Hanley understands that they cannot condition or limit variance based on ownership. He also thinks Ms. Lewis language is reasonable.

Additional discussion about what conditions can and may be imposed on possible variance approval.

Ms. Lewis stated that they cannot condition anything that requires another Board to act a certain way.

Ms. Lewis suggested the following language: Applicant must apply for a Master Plan Special Permit; Only lab uses are permitted on site; If no Master Plan Special Permit is granted within 2 years, relief expires.

Following a motion by Clerk Evans, seconded by Ms. Severino, the Board voted unanimously (5-0) to approve the variance, incorporating the facts and findings from the Planning Staff memo on October 30, 2020 and adding the following conditions:

1. The Applicant is required to apply for a Master Plan Special Permit from the Planning Board.
2. Only a lab building use with supplemental uses on the ground floor shall be permitted on this parcel.
3. If no Master Plan Special Permit is approved for the property site within two (2) years of this decision, then the grant of relief of this Hardship Variance shall expire and no longer be made available at this property site.

RESULT:

APPROVED WITH CONDITIONS

Ms. Severino stated that she was recusing herself from the original 21 Cherry St case due to having conducted personal business with the direct abutters and was also recusing herself from 54 Elm St due to living in the neighborhood and personal relationships with many of the abutters. As those were the only two items of business remaining on the agenda, Ms. Severino left the meeting at 6:36pm.

PUBLIC HEARING: 21 Cherry Street

Applicant Mouhab Rizkallah gave a presentation on the changes he was requesting the Board's approval on. He said that he had moved the garage wall in 1 ft to protect the neighboring tree. Ms. White noted that changes to the size of the garage are not being reviewed by the ZBA tonight, and that the ZBA is only reviewing the possible elimination of the garage door. Mr. Rizkallah indicated that he wanted to present on all the changes he has made that do not align with the ZBA approved plans and that he would like to have the ZBA approve all changes tonight. Ms. White said that the ZBA will only be discussing and voting on changes discussed in the staff memo dated November 10, 2020.

Chair Fontano said the Board doesn't need to hear things that they've already heard or that are not directly relevant to the requested changes. She noted that garage doors can be specially ordered if the width of the garage is non-typical. Mr. Rizkallah argued that all changes he made are relevant to the changes he is requesting approval of.

Mr. Rizkallah then presented an argument for why his project should be evaluated under the new zoning ordinance passed in December 2019, and not under the old zoning ordinance that the original project was permitted under. He claimed that MGL Ch 40A supports his argument, and that his requests are by-right based on the new zoning ordinance and all interpretations of what can a nonconforming structure is. Ms. White said that case law is clear on this topic: since the project was permitted under the old ordinance and the special permit is still open, the old ordinance still applies and any changes made to the special permit need to comply with the old ordinance.

Mr. Safdie said the ZBA defers to the City's interpretation of case law, and Staff is disagreeing with Mr. Rizkallah's interpretation. Chair Fontano added that the only thing that matters is the changes that were made. Mr. Rizkallah stated that he felt like he cannot make his case. Mr. Safdie said the Board is asking for a simple explanation of what changes are and why they were made; the Board is not asking for Mr. Rizkallah's legal opinion regarding why the old zoning ordinance doesn't apply to his project.

Ms. Brockelman said that for each requested change the Board would like to hear only about the differences between the as-permitted plans, the as-built plans, and what was built (i.e., physically existing now). She noted that the as-built plans and what was built are not consistent. Mr. Rizkallah said as-built plans were submitted to the Inspectional Services Department (ISD), not to the ZBA, so he was not sure why the ZBA had as-built plans. Ms. White said she understood the as-built plans as being the documents associated with the building permit for this property. Mr. Rizkallah said the only relevant plans are the ones he is presenting at the ZBA meeting tonight.

Mr. Rizkallah then said that he plans to have an approx. 30-inch trellis extending from the carport over the parking area. He offered to install garage doors that open left-to-right but believes that would result in the doors always being open. He also said that he wants to do landscaping on the property but hasn't been able to contact the Planning Division to go over his proposed landscaping plan.

Chair Fontano briefly addressed the members of the public attending the meeting and requested that they listen closely to what Mr. Rizkallah is saying and that they will consider what they heard tonight when speaking during the public comment portion of the hearing.

Mr. Rizkallah said that the portico is permitted by-right in Neighborhood Residence district and that he thinks the portico is much better than the stairs from front porch to grade-level that were originally approved.

Chair Fontano expressed frustration that Mr. Rizkallah had a drawing set and list of 40 conditions that were negotiated with the neighbors and approved by the Board, and then he unilaterally decided to change everything without going through the proper/required process.

Mr. Rizkallah said that when the zoning ordinance changed in December 2019, he lost communications with the City and didn't know who to talk to, and that his presentation tonight has been unfairly derailed. He stated that City staff members were preventing him from successfully completing his projects, and that his problems with projects arise from the City not communicating since December 2019; he said he is a victim in this situation. Chair Fontano said Mr. Rizkallah is welcome to speak about relevant topics, but the Board is trying to steer the conversation towards only what is within their purview.

Chair Fontano asked Mr. Rizkallah to continue addressing the specific changes that the Board is reviewing, starting with the staircases. Mr. Rizkallah said that the stairs on the right side of the property were preexisting and would impinge on the walkway too much, so he removed them. He said that the stairwell from the front deck to the ground wasn't necessary for egress so he removed it so that the gas meters could go there.

Chair Fontano asked about the change in the number of bedrooms. Mr. Rizkallah said the bedroom count is relevant to zoning only because it is related to parking relief, and since the property is within the quarter mile walkshed of Porter Square the project has no parking requirement at all. Mr. Safdie asked why Mr. Rizkallah was talking about parking – the number of bedrooms is relevant because there is a condition limiting the bedroom count, not because of parking requirements.

Mr. Rizkallah said the table in the original 2017 staff report showed the maximum permitted number of bedrooms based on the amount of parking provided, and since parking is no longer a zoning metric the condition isn't relevant. He said that since fewer bedrooms are being used than what the condition permits (some bedrooms are being used as studies) he is fully in compliance with that condition. Mr. Safdie said under the old zoning it doesn't matter what a bedroom is labeled, if it meets the definition of a bedroom then it's a bedroom under zoning. Mr. Rizkallah said that if he was proposing this project today everything would be by-right and the City's attempt to hold his project to the standards of the old zoning ordinance is about attacking him, not about enforcing zoning. He claimed that the City and Board holding this project to the old zoning ordinance says that they don't agree with the new zoning ordinance.

Ms. White said this building is nonconforming even under new zoning code, as 6 units are not permitted in this district but, irrespective of that, this project is evaluated against the old ordinance and the new ordinance is irrelevant to the request before the ZBA on this project. Mr. Rizkallah said it would not be by-right as new construction, but it would be by-right as a preexisting nonconforming building. Chair Fontano said whether the project is permitted under the new ordinance is not relevant – the project was permitted under the old ordinance, he changed the plans without permission, and he believes that because his changes may be acceptable under the new ordinance he feels that the ZBA should approve of them. She said it is not within an applicant's rights to make unilateral decision about zoning and special approvals.

Ms. Brockelman said the Board's task is to determine whether changes are acceptable or not; the Board doesn't need a comparison between the old and new ordinances or the applicant's value judgement on their own work. She feels that the applicant has exhibited a lack of understanding about the importance of drawings; for an architect, the drawings are your word and your contract.

Mr. Rizkallah said the building has been inspected by ISD at multiple stages and asked how many times he has to contact Planning Staff if the Building Inspectors are approving his work. Chair Fontano said that as the Board has suggested to him two weeks prior regarding 200 North St, he can contact his Ward Councilor who can push, if necessary, for City Staff to work with you.

Mr. Rizkallah said the Ward 5 Councilor has nothing but contempt for him, and that he is moving towards slander litigation against the Councilor. He said his patience has limitations – he has a beautiful building but the ZBA is saying he missed an approval; he said if the Planning Department won't talk to him then he'll just talk to Building Inspectors. He said he wanted to talk tonight about what really happened, but if the Board's objective is to make him look bad then they're succeeding.

Ms. Brockelman said the Board is not trying to make him look bad, they trying to understand the facts of the situation. She asked Mr. Rizkallah to compare the bedrooms in the approved and amended plans.

Mr. Rizkallah said the problem is not that a room is a bedroom, it's that it was rented as a bedroom. He believes he is compliant with Condition #21. He said that the purpose of limiting the bedroom count must be related to the special permit findings, and that according to the new ordinance more bedrooms is not significantly more detrimental. He said he has only moved the location of the bedrooms, which has no functional impact on the neighborhood. If the Board were to find that additional bedrooms in this situation was significantly more detrimental to the neighborhood, they are essentially saying that the new code is wrong for promoting density and that density is bad; he said the only way to solve the affordable housing crisis is by providing density.

Mr. Safdie said the only thing relevant to the Board's decision is the language of ordinance and the rightful application of the ordinance to the project. He feels that if the discussion keeps veering off into irrelevant topics, he will need to recuse himself.

Chair Fontano asked Mr. Rizkallah to address the rear deck. Mr. Rizkallah said the addition at the rear of the property complies with setbacks, and that it doesn't make sense to have a flat roof rather than having a rear deck there. He said he filed a building permit under the new ordinance, but he didn't ask the Board for a revision because he understood that change would be by-right after this special permit is closed. He is asking to put railings on the rear addition rather than leaving it as Juliet balconies. He said he has let a neighbor put a fence on his property, so it's only right that he can give his tenants a rear deck.

Ms. Brockelman asked whether the deck currently exists or is just a request. Ms. White said the deck does not currently exist; Staff originally thought that the deck may be by-right, but because of the condition on this special permit a rear deck is not permitted.

Chair Fontano asked Mr. Rizkallah to address Condition #30. Mr. Rizkallah said he hasn't installed a patio, and that he cares about landscaping a lot. He said he has installed a pea stone area in the rear and plans to do nice landscaping that incorporates the pea stone. He said he began working on a landscaping plan in May, and that Planning Staff have deprived him of the conversation needed to allow landscaping to be installed. Ms. White said Staff had received in late May/early June a landscaping plan that showed mostly pea stone and some plantings; Staff had responded that the amount of pea stone proposed did not constitute landscaping and had suggested improvements. She said that while Staff provides feedback on landscaping plans, they are not responsible for creating landscaping plans for the applicant. She said that the applicant now wants the ZBA to approve what has been submitted as the landscaping plan. She noted that Staff cannot understand how the pea stone proposed constitutes landscaping as defined by the old ordinance.

Mr. Rizkallah went over a selection of emails related to the landscaping plan and said that Staff had refused to meet with him about the landscaping plan. Ms. White said that not all emails related to the landscaping plan were shown and that Staff provides all feedback on this landscaping plan in writing.

Ms. Brockelman clarified that the landscaping plan is submitted for the Board's approval, and not as an as-built plan. She asked when the patio came up. Ms. White said the applicant is requesting that the Board remove that condition.

Chair Fontano asked about the window on the right side of the building. Mr. Rizkallah said he felt that the large window originally approved would invade the tenant's privacy too much since the window looks into the apartment's living room. Chair Fontano asked who is the smaller window providing privacy from? Mr. Rizkallah said from people walking by and the neighboring building.

Chair Fontano asked about the changes to the door, as the plans did not indicate what door was changing. Mr. Rizkallah said the rear door was closer to the exterior corner of the wall and was shifted inwards due to changes in

the floor plan. He said that due to the strange roof, stairwells would not fit under it and he had to move where the stairs were, resulting in him also needing to shift where the door was to accommodate the relocated kitchen.

Ms. Brockelman asked what was the purpose of the as-built drawings by Joe the Architect? Mr. Rizkallah said the Building Commissioner said the building could receive a Temporary Certificate of Occupancy if the life safety requirements were completed, and that tenants started moving into the building on June 1. Mr. Rizkallah said the Building Commissioner then changed his mind and wouldn't allow the Temporary Certificate of Occupancy until ISD received as-built plans. He said the original architect couldn't move fast enough to get the drawings done, so he had Joe the Architect do them.

Ms. Brockelman asked whether the as-built floor plans are accurate. Mr. Rizkallah said they are. Ms. Evans said she was confused about the as-builts because of the garage door; she asked whether the architect did a site visit or just assumed what was going to be built. Mr. Rizkallah said he only submitted as-built elevations to ISD, not to the ZBA. Ms. Evans asked why an architect would submit something that wasn't accurate. Mr. Rizkallah said architects make mistakes, and that the door shouldn't be on the as-built plans.

Ms. Evans asked if any Certificate of Occupancy had been issued for this building. Ms. White said that is irrelevant for the ZBA's review, but the property does not have a Temporary Certificate of Occupancy. She said that ISD has conducted site visits, and this topic is under ISD's and the Legal Department's purview. Ms. Evans said she was confused about why people are living in the building if the special permit isn't closed out. Ms. White said since no Certificate of Occupancy has been issued the special permit is still open and this revision is evaluated under the old zoning ordinance. Ms. White added that even if the project was under the new zoning ordinance, the conditions on the special permit are still relevant. Ms. Evans clarified that if something could be by-right under the new ordinance, but a special permit condition requires something else, the permit condition trumps the new zoning. Ms. White said that is correct.

Ms. Brockelman said the as-built floor plans are not accurate because the photo of rear door as constructed shows as it being in the corner, and the as-built plans show it as being in center of that wall section. Mr. Rizkallah said he can always find errors in architects plans. Ms. Brockelman said the entire point of as-built plans is that they show what exists. Mr. Rizkallah said they are not his drawings, and that he accepts a certain amount of imperfection.

Chair Fontano opened public comment.

Timothy Schofield (20 Park Plaza, Boston – attorney for 22, 23, and 25 Cherry St) submitted a letter of opposition stating legal reasons that this motion should be denied. The applicant built something that was not authorized and is now asking for you to sanctify is unlawful actions and remove the approved conditions. The reasons for the conditions have not changed and are not de minimis.

Nicholas Asermelly (30 College Ave) works for LaCourt Realty. In 8 days, they received 5 inspections from the City. He feels that the changes that were made were very small changes. The applicant worked very hard with all the neighbors to make sure everyone was happy and people had a place to move into on June 1st.

Neill Kumar (60 Preston Rd) is concerned with MAMAS (Mutual Aid Medford and Somerville) allowing squatters at 42 Dana Street. Dr. Rizkallah is an excellent landlord and his houses are in excellent condition. This is a community issue.

Meredith Porter (104 Josephine Ave) urged the Board to rule in favor of the neighbors or the neighbors will be forced to appeal. All the conditions are important to the neighbors, especially the garage having parking for two cars.

Manish Kumar (26 Alpine St) seconded what his brother (Neill Kumar) said about Dr. Rizkallah's properties being in great shape. He feels that 21 Cherry Street is the nicest building on the street. MAMAS (Mutual Aid Medford and Somerville) illegally moved someone into an apartment in Somerville. His sister (a realtor) tried to show the

property and was confronted by the man that was illegally living there. He wanted it to be known that this is a major concern in Somerville.

Lori Segall (25 Cherry St) has been involved with this project since the beginning. She feels that the open garage is an eye-sore and is not keeping with the character of the neighborhood. The trash cans are visible to the neighbors. The patio was never agreed to. She asked that the Board please hold the developer to the conditions that were approved three years ago.

Jered Floyd (36 Cherry St) has been following this project since the beginning. He watched as the developer and neighbors had many good faith discussions that ultimately led to a compromise on design and permit conditions. He watched as the developer willfully built a structure that violates multiple aspects of the ZBA agreement. He watched as the developer moved tenets in before he received a Certificate of Occupancy. He requested that the Board deny the developer's request to change the conditions, especially the one regarding the garage door.

Garrett Laws (22 Cherry St) stated that nothing has changed since the ZBA's plan approval. He hoped that the ZBA's plan approval with all included conditions will stand as is.

Cara Polom (21 Cherry St) and her fiancé were the first to move into the property and were harassed by the neighbors telling them that they didn't have a right to move in. Aside from the challenges on day one, they love the place and Dr. Rizkallah has been good to them.

Alan Moore (23 Cherry St) was a part of the original negotiations with the developer, the neighbors, and the City. He would especially like Condition #23 to be upheld as his property line is very close to the area in which the proposed deck would be. Since the conditions remain the same today, as they did 3.5 years ago, he feels that the developer should be held to those conditions. He strongly requested that the Board does not eliminate any of the conditions and requires the developer to follow the original building plans.

Ward 5 Councilor Mark Niedergang (29 Conwell St) stated his opposition to remove conditions. He finds the Staff Report to be accurate and agrees with its recommendations. The conditions were a result of extensive communications between the developer and the neighbors and were a critical part of the ZBA's original decision. He urges the Board to deny all requests to remove the conditions.

Councilor-At-Large Mary Jo Rossetti (80 Electric Ave) wanted to confirm her email stating her strong opposition was received. Chair Fontano confirmed and read her email aloud.

Ward 6 Councilor Lance Davis (356 Highland Ave) agreed that the Staff Report was thorough and he trusts that the Board will make the right decision on this case. He conveyed his concern for this type of request as it relates to the public's trust in the City's processes.

Amanda Marshall (5 Walker St) urged the Board to approve the requests. Dr. Rizkallah was able to shelter people during a pandemic that otherwise would not have a home, which was heroic in her eyes.

Lori Roberts (17 Cherry St) stated that the last unit for rent is being advertised as a three-bedroom with a deck. This is not what the neighbors agreed to. The deck would be detrimental to the neighbors. The tenets are also parking in front of neighbors houses instead of in the garage, like proposed. She adamantly asked that the Board does not approve any of the changes.

Purvi Kumar (Preston Rd) works with LaCourt Realty. During the pandemic, Dr. Rizkallah has done a great job providing homes for people that are renovated and beautiful.

John Reinhardt (25A Cherry St) hoped that the Board will hold the developer accountable for agreements that he made. He strongly requested that the Board do not eliminate any conditions and require the original building plans to be followed.

Fred Berman (25 Cherry St) is in support of the City Staff's recommendation that the conditions be preserved. He believes that developers need to be held to their commitments. He allowed tenants to move in prior to receiving the Certificate of Occupancy due to the pandemic, but not after evicting a 40-year tenant after promising he could stay. He is not convinced that Dr. Rizkallah is a man of his word.

Reed Hoffman (30 College Ave) works with LaCourt Realty. He is in support of the changes, mainly because they don't affect anything outside the property at all.

Amanda Nicholson (100 Josephine Ave) urged the Board not to approve the changes that were agreed upon. The developer is undermining the community and the entire process.

Todd Kaplan (44 Kidder Ave) is in support of upholding the agreement made in good faith with the developer.

The Board noted that they received written comments from the following individuals: David Dahlbacka (25 Hancock Street), Ulysses Lateiner (15 Chandler Street), Jim McGinnis (26 Bow St), Alan Moore (23 Cherry St), Aji Sjamsu (10 Whipple Street), Tim Schofield (attorney for 22, 23, and 25 Cherry St), Allison McIntyre (address unknown), Nan Levinson (29 Cherry St), Cara Polom (21 Cherry St), Whitney Howe (21 Cherry St), Aiping Schneider (9 Mossland St), Ward 5 Councilor Neidergang, and Councilor-At-Large Rossetti.

Chair Fontano closed public comment. Mr. Rizkallah requested that the Board explain in detail any denials.

Ms. Evans said she is willing to approve some changes but is not in favor of removing any of the special permit conditions.

Chair Fontano told Mr. Rizkallah that the Board is not necessarily going to explain every denied request in detail. She thinks the change to the garage is unacceptable; the rest of the Board agreed. Mr. Rizkallah asked that he be able to make changes to the garage if the Board is not approving converting to a carport. Ms. White said any additional changes would require a separate revision.

The Board agreed that the proposed changes to the stairs are acceptable.

The Board agreed that removing condition #21 was not acceptable. Mr. Safdie suggested that the Board clarify the proposed changes to the stairs versus the bedroom. The Board agreed that the change in location of interior stairs was acceptable, but that the creation of an additional bedroom was not. Mr. Safdie underscored the definition of "bedroom" in the zoning ordinance that rules this project; the use and labeling of a room is irrelevant; the only question is whether a space meets definition of a bedroom. Ms. Brockelman said the room labeled study was originally open, and now has been enclosed. Mr. Rizkallah said he will revert to the Building Department's policy on the definition of a study. Ms. White said he needs to build according to the plans approved by ZBA. Chair Fontano stated that this is not a dialogue with the applicant, this is a discussion by the Board.

The Board agreed that removing condition #23 was not acceptable.

The Board agreed that removing condition #30 was not acceptable, and that the proposed landscaping plan submitted by the applicant was not sufficient. Chair Fontano noted that all pea stone and some landscaping isn't sufficient; the landscaping plan needs more plantings. Ms. White noted for the applicant's information that the approval of a landscaping plan is an iterative process, and that Staff is not going to draw a landscaping plan for the applicant but will give examples from other projects and feedback on what is proposed.

The Board agreed that the change to the side window was acceptable.

The Board agreed that the change to the rear door was acceptable.

Chair Fontano said that the applicant needed to install garage doors as originally approved and asked that Staff make sure that the trash barrels are screened as required by the original approval. Ms. White said Staff is aware of complaints about the trash barrels not being screened and is monitoring it. Mr. Rizkallah said the trash barrels needed to be in backyard to be screened, and he thought it was unfair to his tenants so he moved trash barrels to the front. Chair Fontano said it's not unreasonable to have trash barrels in back.

Following a motion by Clerk Evans, seconded by Ms. Brockelman, the Board voted unanimously (4-0) to permit the following changes: allow removal of the right elevation exterior stairs, allow inclusion of the right elevation exterior stair; allow inclusion of right elevation ground-level rail and balusters; allow inclusion of front elevation portico, front step rails, and rails along right elevation steps leading from the public sidewalk; allow change in window size on right elevation; allow removal of stairs leading from the first-level front elevation deck to ground level; allow the following specific interior arrangements only: re-locating stairs, change in room sizes, change in room locations; and allow alterations to a door.

Following a motion by Clerk Evans, seconded by Ms. Brockelman, the Board voted unanimously (4-0) to deny the following requested changes: removal of the garage doors, additional bedroom, removal of condition #23, removal of condition #27, removal of condition #30. The Board reiterated that they approved a two-car garage with a garage door, not a carport; trash barrels cannot be stored in the garage as it prevents the garage from being used for parking as intended.

The Board found that none of the changes they are choosing to deny are in keeping with what was approved and what is consistent with the zoning ordinance. The Board found that the approved changes are not more detrimental to the neighborhood than the previously approved plans, and that those changes are compatible with the neighborhood and with the intent of the ordinance.

The Board elaborated on their reasoning for denying a number of the proposed changes. The changes that were denied were denied because they were more detrimental than what was approved. The conditions originally imposed were found to be necessary conditions to make the proposal compatible with the neighborhood and removing them will make the project not in keeping with the neighborhood. The garage doors were an improvement over the previous carport. Keeping the bedroom count down is relevant and important because a 6-unit building isn't allowed in the zoning district; keeping bedroom count down limits the number of occupants so that the building is more in keeping with the neighborhood scale, as the building might have more units than neighbors but doesn't have significantly more bedrooms overall.

Clerk Evans made motion to amend prior motion to incorporate facts and findings discussed tonight regarding the reasons for denying the requested changes.

The Board went into recess at 9:34pm and reconvened at 9:42pm.

Ms. White recommended language to the Board to amend the previous motions regarding the requested changes.

Following a motion by Clerk Evans, seconded by Mr. Safdie, the Board voted unanimously, with Ms. Severino abstaining (4-0-1) to amend the previous motion to allow the following changes, in keeping with the Board's stated findings: allow removal of the right elevation exterior stairs, allow inclusion of the right elevation exterior stair; allow inclusion of right elevation ground-level rail and balusters; allow inclusion of front elevation portico, front step rails, and rails along right elevation steps leading from the public sidewalk; allow change in window size on right elevation; allow removal of stairs leading from the first-level front elevation deck to ground level; allow the following specific interior arrangements only: re-locating stairs, change in room sizes, change in room locations; and allow alterations to a door.

Following a motion by Clerk Evans, seconded by Mr. Safdie, the Board voted unanimously, with Ms. Severino abstaining (4-0-1) to amend the previous motion to deny the following changes, in keeping with the Board's stated

findings: deny change to garage; deny additional bedroom; deny removal of condition #23; deny removal of condition #27; deny removal of condition #30.

RESULT:

PARTIALLY APPROVED, PARTIALLY DENIED

PUBLIC HEARING: 54 Elm Street

Adam Dash (attorney) gave an overview of the application request. Property is in Neighborhood Residential and Small Business Overlay district. Owner also operates Dakzen on Elm Street. This is going to be Thai street food in a tiny space with a total of 26 seats. The dining area is only ~400sf. The proposal is to prep food at Dakzen and then cook at 54 Elm Street. This would prevent wet trash and raw foods at 54 Elm since prep work would be done at Dakzen. The look of the building, parking, and bike racks have already been dealt with when building was originally permitted. There is one parking space under the building for the property. The business will not be open during morning rush or late at night; which was one of concerns about a previous proposal for a coffee shop there.

At the neighborhood meeting abutters brought up issues about rats. Client knows how to deal with pests, will use same pest control company as at Dakzen. Quiet carbon filters will be installed to help with cooking smells. No outdoor seating is being proposed. There is loading space on the street for food pick up. Trash is well controlled at Dakzen and will be similarly controlled here. The space can't be vacant forever; office space is not permitted use in Small Business Overlay. A restaurant is in keeping with purpose of the Somerville Zoning Ordinance and getting someone who is well known and responsible.

Chair Fontano asked about the location of bike racks and pick up spots. Mr. Dash confirmed that a bike rack was put up as part of the original building; around the corner on Mossland. There is a loading space on the street and a parking space under the building that could be used for pick up, in front of 54 Elm is bus stop.

Ms. Brockelman asked if there are renderings. Mr. Dash said that renderings are moot since the only zoning request is change of use. Ms. White confirmed that the ZBA does not have purview over plans and they are only voting on the change of use.

Chair Fontano opened public comment.

Andrea Morrison (68 Elm St) opposes the Special Permit request. She feels that restaurants require parking for customers and employees, sufficient trash storage, and loading areas for deliveries. The tenets of the building are already competing for on-street parking. The addition of a restaurant would add congestion to an already busy intersection at a bus stop and school crossing. She feels that the neighborhood would experience negative consequences if the petition is approved.

Aiping Schneider (9 Mossland St) opposed the proposal. The area is very congested. It's not safe for cars or pedestrians and a new business would attract even more people.

Glenn McCormack (82 Elm St) opposed the proposal. He noted that at the neighborhood meeting, all the neighbors were opposed except for one person that showed up one hour late. He stated that the building owner has never asked the neighbors what they would like to see in this space.

Crystal & Steve Huff (52 Elm St) feels that a restaurant at this location is inevitable. She would like to see it be a restaurant that already does a good job listening to its neighbors concerns and has been successful. She feels that this is a reasonable proposal.

Jeff Brown (46 Elm St) opposed the proposal and is very concerned with rodents at the space. He does not feel that a steel dumpster will help. He is also concerned with traffic and cooking smells. Charcoal vents do not completely mitigate cooking smells.

Ward 5 Councilor Mark Niedergang (29 Conwell St) strongly supports the proposal. He also feels that some type of restaurant is inevitable. He feels that this applicant has responded thoughtfully to all of the neighbor's concerns throughout the process and is an attractive applicant for this space.

Clara Serpa (68 Elm St) clarified that her email was incorrectly posted to the 21 Cherry Street project, as she wrote the email referencing the 52 Elm Street project. She opposed the proposal based on rats, trash, parking, and safety concerns. The lifelong residents in the neighborhood do not want a food establishment at this location.

Scott Lovitch (17 Mossland St) would like to clarify that his email was incorrectly posted to the Cherry St project, as he wrote the email referencing the 52 Elm Street project. He opposed the proposal based on impact of quality of life, rodents, etc.

The Board noted that they also received written comments from Dóra Takács (8 Gilson Terrace), Andrea Morrison (68 Elm Street), Audra Amasino (8 Gilson Terrace), Clara Serpa (68 Elm St), Donene Williams (17 Cedar St), Maria Carvalho (80 Elm St), Ellen McPherson (74 Elm St), Mark Lunsford (address unknown), Ashwini Jambhekar (17 Mossland St), Scott Lovitch (17 Mossland St), Aiping and Gerald Schneider (9 Mossland St), Steve Huff (52 Elm St), and Ward 5 Councilor Mark Neidergang.

Chair Fontano closed public comment.

Mr. Dash explained that deliveries and employee parking will be at Dakzen. Prepared food from Dakzen and employees will be delivered in one van. The owner will meet all the health codes and doesn't foresee any issues.

Chair Fontano asked what is permitted in Small Business Overlay. The Board & Staff reviewed Small Business Overlay permitted uses. Mr. Dash noted that all of the proposed uses for here are either restaurants or cafes; while other uses are permitted, not all uses are attractive at this location since it's so small. Chair Fontano wanted the neighborhood to see what was possible and what was not.

The Board and Staff discussed the length of duration of Special Permits and the tight space around the building. Chair Fontano asked Staff if this space can be rezoned as residential. Ms. White said she would need to look into the possibility, although the building owner hasn't come forward with the request.

Chair Fontano and Mr. Dash discussed the onsite trash barrels, the location of the dumpster, and the parking concerns.

Councilor Neidergang confirmed that the two buildings are connected with residential above and the commercial space below. He also noted that the neighbors would rather see a convenience or small grocery store go back into the space.

Ms. Brockelman noted that a food service business, especially take-out, could liven up this community corner, as long as they keep the pest problem under control. She feels that they would shovel the corner in the winter, which would be another benefit for the neighbors and she thinks they should give them a chance.

Mr. Dash confirmed that the restaurant will be regulated by more than just zoning ordinance; it will also have to comply with health codes and common victualler license. The applicant has been a good, proven business owner in the City.

Clerk Evans noted that this space can't be vacant forever. Any other business would have the same traffic issues. She feels that tying the permit to the applicant would be beneficial, since this applicant is committed to handling the concerns of the neighborhood. Mr. Safdie agreed.

Mr. Dash had no problem with tying permit to applicant or affiliate. Clerk Evans mentioned that they do that a lot with fast food restaurants.

Following a motion by Clerk Evans, seconded by Ms. Brockelman, the Board voted unanimously, with Ms. Severino abstaining (4-0-1) to approve the use special permit for a restaurant use in the Neighborhood Residence and Small Business Overlay Districts, incorporating the facts and findings of the staff report and adding the following condition:

1. Approval is only for Kon Lay Yum, LLC and its affiliates.

RESULT:

APPROVED WITH CONDITIONS
